



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35767]

Allentown and Auburn Railroad Company, Inc.—Change in Operators Exemption—Rail Line of Kutztown Transportation Authority

Allentown and Auburn Railroad Company, Inc. (AARR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to change operators¹ from East Penn Railroad, LLC (ESPN) to AARR over a 4.12-mile rail line between milepost 0.17, at Topton, Pa., and milepost 4.29, at Kutztown, Pa. (the Line).² The Line is owned by the Kutztown Transportation Authority (KTA), a municipal authority organized under the Pennsylvania Municipal Authorities Act of 1954.³ The change in operators for the Line is being accomplished through ESPN's assignment of its authority to operate the Line to AARR with the consent of KTA. This change in operators is exempt under 49 CFR 1150.31(a)(3).⁴

¹ AARR's verified notice of exemption is captioned as an operation exemption. However, because the operator of the Line will change via assignment of the current operator's lease, the authority sought is more properly a change in operators exemption. The docket has been recaptioned accordingly.

² ESPN was authorized to operate the Line in East Penn Railroad—Operation Exemption—Kutztown Transportation Authority, FD 35104 (STB served Dec. 13, 2007).

³ Id.

⁴ To qualify for a change of operators exemption, an applicant must give notice to shippers on the line. 49 CFR 1150.32(b). In a letter filed September 18, 2013, AARR certified to the Board that it provided notice to the only active shipper on the Line.

This exemption will be effective on October 18, 2013 (30 days after the verified notice was filed).⁵ The transaction is expected to be consummated on or sometime after the effective date.

AARR certifies that this transaction will not result in AARR's becoming a Class II or Class I rail carrier and that the projected annual revenue of AARR will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 11, 2013 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35767, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 655 Fifteenth Street, N.W., Washington, DC 20005.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: September 26, 2013.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.

⁵ AARR filed its verified notice of exemption on September 12, 2013, and supplemented it by letter filed on September 18, 2013. The date of AARR's supplement will be considered the filing date for purposes of calculating the effective date of the exemption.

Jeffrey Herzig

Clearance Clerk

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